

Stephen G. Recordon (SBN 91401)

**Recordon & Recordon**

225 Broadway, Suite 1900

San Diego, CA 92101

Phone: (619) 232-1717

Facsimile: (619) 232-5325

[sgrecordon@aol.com](mailto:sgrecordon@aol.com)

Clinton Rooney (SBN 221628)

**Rooney & Lickel**

225 Broadway, Suite 1900

San Diego, CA 92101

Phone: (619) 573-9547

[rooneycdi@gmail.com](mailto:rooneycdi@gmail.com)

[Additional attorneys listed on signature page]

Attorneys for Plaintiff MARIA CAUDILLO

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARIA CAUDILLO,	)	CASE No. 12-cv-00200-IEG-RBB
	)	
Plaintiff,	)	FIRST AMENDED COMPLAINT
	)	FOR VIOLATIONS OF THE
vs.	)	FEDERAL FAIR DEBT
	)	COLLECTION PRACTICES ACT
PORTFOLIO RECOVERY	)	AND VIOLATIONS OF THE
ASSOCIATES LLC,	)	ROSENTHAL ACT
	)	
Defendant.	)	
	)	
_____	)	

**INTRODUCTION**

1. Plaintiff Maria Caudillo, through her counsel, brings this action to challenge the acts of Portfolio Recovery Associates, LLC (hereinafter "PRA")

1 regarding attempts by PRA to unlawfully and abusively collect a debt allegedly  
2 owed by Plaintiff, and this conduct caused Plaintiff damages.

3 2. Plaintiff makes these allegations on information and belief, with the  
4 exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel,  
5 which Plaintiff alleges on personal knowledge.

6 3. While many violations are described below with specificity, this  
7 Complaint alleges violations of the statutes cited in their entirety.

8 4. Any violations by Defendants were knowing, willful, and intentional,  
9 and Defendants did not maintain procedures reasonably adapted to avoid any such  
10 violation.

### 11 **JURISDICTION AND VENUE**

12 5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15  
13 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

14 6. This action arises out of Defendant's violations of the Fair Debt  
15 Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal  
16 Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32  
17 ("Rosenthal Act").

18 7. As PRA does business in the state of California, and committed the  
19 acts that form the basis for this suit with the intent to cause effects in the state of  
20 California, this Court has personal jurisdiction over PRA for purposes of this action.

21 8. Venue is proper as PRA does business in the County of San Diego, the  
22 acts at issue took place in the County of San Diego, and PRA has a business  
23 location in the County of San Diego, in the central district of San Diego.

### 24 **PARTIES**

25 9. Plaintiff is a natural person, an adult, is a disabled person as defined in  
26 California Civil Code § 1761(g), and resides in San Diego County, California.

27 10. Plaintiff is informed and believes and thereon alleges that Defendant  
28 PRA is a Delaware limited liability company, based in Virginia and doing business  
in the state of California.

1           11. Defendant PRA is a person who uses an instrumentality of interstate  
2 commerce or the mails in a business the principal purpose of which is the collection  
3 of debts, or who regularly collects or attempts to collect, directly or indirectly, debts  
4 owed or due or asserted to be owed or due another and is therefore a debt collector  
5 as that phrase is defined by 15 U.S.C. § 1692a(6).

6           12. Defendant PRA, in the ordinary course of business, regularly, on  
7 behalf of himself, himself, or others, engages in debt collection as that term is  
8 defined by California Civil Code § 1788.2(b), is therefore a debt collector as that  
9 term is defined by California Civil Code § 1788.2(c).

10           13. Defendant PRA claims that Plaintiff is obligated to pay a debt, and  
11 therefore Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

12           14. Plaintiff is a natural person from whom a debt collector sought to  
13 collect a consumer debt which was due and owing or alleged to be due and owing  
14 from Plaintiff, and is a “debtor” as that term is defined by California Civil Code §  
15 1788.2(h).

16           15. This case involves money, property or their equivalent, due or owing  
17 or alleged to be due or owing from a natural person by reason of a consumer credit  
18 transaction. As such, this action arises out of a consumer debt and “consumer  
19 credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

#### 20           **FACTS COMMON TO ALL CAUSES OF ACTION**

21           16. On July 21, 2011, PRA filed a complaint (“State Court Complaint”) in  
22 the Superior Court of California for the County of San Diego against Ms. Caudillo,  
23 in the matter of Portfolio Recovery Associates, LLC v Maria Caudillo, et al, case  
24 number 37-2011-00077933-CL-CL-NC.

25           17. A copy of this July 21, 2011 State Court Complaint is attached as  
26 Exhibit A.

27           18. In the above July 21, 2011 State Court Complaint, later served on Ms.  
28 Caudillo, PRA alleged that PRA furnished “purchases and/or cash advances” to Ms.

1 Caudillo on a credit card account issued by PRA, and that PRA was entitled to an  
2 award of attorney's fees.

3 19. In fact, PRA did not ever furnish "purchases and/or cash advances" to  
4 Ms. Caudillo on any credit card, nor did PRA issue any credit card to Ms. Caudillo,  
5 and PRA had no legal basis to request attorney's fees.

6 20. PRA did not list any creditor other than PRA in the above April 11,  
7 2011 State Court Complaint, and by doing so PRA represented that PRA was in fact  
8 the "original creditor," or the party issuing credit, to Ms. Caudillo.

9 21. The "least sophisticated debtor" would in fact be confused or mislead  
10 as to the identity of the "original creditor" on the account alleged by PRA in the  
11 above July 21, 2011 State Court Complaint.

12 22. In the above July 21, 2011 State Court Complaint, PRA also claimed a  
13 right to recover \$4,845.61 under a theory of Money Lent.

14 23. Neither PRA nor any predecessor of PRA lent money to Ms. Caudillo  
15 in this amount.

16 24. In the above July 21, 2011 State Court Complaint, PRA also claimed a  
17 right to recover \$4,845.61 under a theory of Goods, Wares and Merchandise.

18 25. Neither PRA nor any predecessor of PRA provided goods, wares or  
19 merchandise valued at this amount to Ms. Caudillo without being paid.

20 26. In the above July 21, 2011 State Court Complaint, PRA also claimed a  
21 right to recover \$4,845.61 under a theory of Account Stated.

22 27. Ms. Caudillo never entered into an account stated with PRA or with  
23 any predecessor of PRA.

## 24 **ALLEGATIONS SPECIFIC TO CERTAIN CAUSES OF ACTION**

### 25 **FIRST CLAIM FOR RELIEF**

#### 26 **(Violations of the FDCPA by PRA)**

27 20. Plaintiff re-alleges and incorporates herein by reference the allegations  
28 contained in the paragraphs above.

21. Defendant PRA violated the FDCPA. Defendant's violations include, but are not limited to the *following*:

- a. *15 U.S.C. §1692e* by making a false, deceptive or misleading misrepresentation in the collection of a debt;
- b. *15 U.S.C. §1692e(2)* by misrepresenting the character, amount and legal status of a debt;
- c. *15 U.S.C. §1692e(5)* by threatening to take an action that cannot legally be taken or was not intended to be taken;
- d. *15 U.S.C. §1692e(10)* by use of a false representation or deceptive means to collect a debt;
- e. *15 U.S.C. §1692f(1)* by collection of an amount not expressly authorized by an agreement creating a debt, or by law.

22. Plaintiff is entitled to actual damages sustained as a result of Defendant's conduct, in an amount according to proof; to statutory damages of \$1,000; costs of the action; and reasonable attorney's fees, all pursuant to *15 U.S.C. §1692k*.

## **SECOND CLAIM FOR RELIEF**

### **(Violations of the Rosenthal Act by PRA)**

23. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations contained in the paragraphs above.

24. Based on information and belief, Defendant PRA's acts and omissions violated *California Civil Code § 1788 et seq*, including, but not limited to the following sections: *California Civil Code §§ 1788.17 and 1788.13*.

25. Based on information and belief, Defendant's violations of *California Civil Code § 1788.17*, which incorporates several of the provisions of the FDCPA, include, but are not limited to, the following: Defendant's violations include, but are not limited to the *following*:

- a. *15 U.S.C. §1692e* by making a false, deceptive or misleading misrepresentation in the collection of a debt;

- b. 15 U.S.C. §1692e(2) by misrepresenting the character, amount and legal status of a debt;
- c. 15 U.S.C. §1692e(5) by threatening to take an action that cannot legally be taken or was not intended to be taken;
- d. 15 U.S.C. §1692e(10) by use of a false representation or deceptive means to collect a debt;
- e. 15 U.S.C. §1692f(1) by collection of an amount not expressly authorized by an agreement creating a debt, or by law.

26. Defendant also violated the Rosenthal Act at Civil Code § 1788.13 by making a false representation that the debt alleged may be increased by the addition of attorney's fees, when in fact no such fees may legally be charged.

27. Defendants' violations of the Rosenthal Act were willful and knowing, thereby entitling Plaintiff to statutory damages pursuant to *Civil Code § 1788.30(b)*.

28. As a proximate result of the violations of the Rosenthal Act committed by Defendant, Plaintiff is entitled to any actual damages pursuant to California Civil Code § 1788.30(a); statutory damages in an amount up to \$1,000.00 each pursuant to California Civil Code § 1788.30(b); and, reasonable attorney's fees and costs pursuant to California Civil Code § 1788.30(c) from Defendant.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant PRA, and pray for the following relief:

1. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against Defendant PRA and for the Plaintiff;
2. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against Defendant PRA and for the Plaintiff;
3. An award of actual damages pursuant to California Civil Code § 1788.30(a) against Defendant PRA and for Plaintiff;
4. An award of statutory damages of \$1,000.00 pursuant to California Civil Code § 1788.30(b) against Defendant PRA and for Plaintiff;

1           5.     An award of an additional \$2,000.00 in statutory damages pursuant to  
2 California Civil Code §§ 3345;

3           6.     An award of costs of litigation and reasonable attorney's fees, pursuant  
4 to 15 U.S.C. § 1692k(a)(3) and California Civil Code § 1788.30(c) against  
5 Defendant PRA; and

6           7.     Such other and further relief this court may deem just and proper.

7                                 Respectfully submitted,

8  
9     Date: May 14, 2012

s/Joshua B. Swigart

Joshua B. Swigart

Attorney for Plaintiff MARIA CAUDILLO

10  
11  
12  
13     Robert L. Hyde, Esq. (SBN: 227183)

14     [bob@westcoastlitigation.com](mailto:bob@westcoastlitigation.com)

15     Joshua B. Swigart, Esq. (SBN: 225557)

16     [josh@westcoastlitigation.com](mailto:josh@westcoastlitigation.com)

17     **Hyde & Swigart**

18     411 Camino Del Rio South, Suite 301

19     San Diego, CA 92108-3551

20     Telephone: (619) 233-7770

21     Facsimile: (619) 297-102  
22  
23  
24  
25  
26  
27  
28